

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LADON DEMARCO CLOUD,

Petitioner,

Case No. 1:05-CV-154

v.

HON. GORDON J. QUIST

MARY BERGHUIS,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

The Court has before it Petitioner's objections to the Magistrate Judge's Report and Recommendation issued on January 12, 2007, in which the magistrate judge recommended that the Court deny Petitioner's habeas claim that he was denied a fair trial and due process because the state trial court failed to use the standard jury instructions. In particular, the magistrate judge reviewed the jury instructions and agreed with Michigan Court of Appeals' conclusion that there was no error with regard to the trial court's jury instructions. The magistrate judge concluded that the Petitioner's challenges to the jury instructions could not be sustained under due process standards. Moreover, the magistrate judge found nothing to suggest that the decision of the state court either resulted in a decision that was contrary to, or involving an unreasonable application of, established federal law as determined by the United States Supreme Court, or resulted in a decision that was based upon an unreasonable determination of facts in light of the evidence presented at the state court proceeding.

After conducting a *de novo* review of the report and recommendation, the Court concludes that the report and recommendation should be adopted by the Court.

Petitioner's objections do not raise new arguments, but merely recite Petitioner's contention that the trial court's failure "to give the standard jury instructions charge and substituting them with drafted instructions" confused and misled the jury, prejudicing the "Petitioner's rights to a properly instructed jury according to the evidence that was presented during his trial." (Obj. at 2.) Petitioner also asserts that the magistrate judge failed to discuss Petitioner's cited case authority, failed to apply the standard governing a claim based on a constitutional violation, and failed to liberally view Petitioner's pleadings due to Petitioner's pro se status. (Obj. at 5.)

The magistrate judge examined the Michigan Court of Appeals record and the trial transcript, including the jury instructions, and properly concluded that the state trial court thoroughly instructed the jury as to all of the elements of the charged offenses and the defense of abandonment. The magistrate judge also applied the proper AEDPA standard and the standard of review when examining a due process claim arising from allegedly improper jury instructions. Petitioner has not established that the jury instructions were not merely "undesirable, erroneous, or even 'universally condemned,'" but that they "violated some constitutional right." *Donnelly v. DeChristoforo*, 416 U.S. 637, 643, 94 S. Ct. 1868, 1871 (1974); *Estelle v. McGuire*, 502 U.S. 62, 72, 112 S. Ct. 475, 482 (1991). Based on its review of the magistrate judge's report and recommendation, the Court finds no basis for Petitioner's objections. Therefore,

IT IS HEREBY ORDERED that the Magistrate Judge's Report and Recommendation issued on January 12, 2007 (docket no. 35), is **APPROVED AND ADOPTED** as the Opinion of this Court.

IT IS FURTHER ORDERED that Petitioner's petition for writ of habeas corpus is **DENIED**.

The case is **concluded**.

Dated: August 16, 2007

/s/ Gordon J. Quist
GORDON J. QUIST
UNITED STATES DISTRICT JUDGE